IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

CRL.A.No. 85 of 2003(C)

C.C.NO.31/2002 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

APPELLANT: COMPLAINANT:

ROSELIND FRANCIS, W/O.FRANCIS FERNANDEZ,
AGED 58 YEARS, RESIDING AT KADAYIL PARAMBIL VEEDU,
VADAKKEVILA VILLAGE, KOLLAM-10.

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)

RESPONDENTS: ACCUSED AND STATE:

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1. K.MURALEEDHARAN,
CONTRACTOR, AGED 52 YEARS, RESIDING AT SYAM VIHAR,
MAHIL P.O., THRIKKADAVOOR, KOLLAM.

2. STATE OF KERALA,
REPRESENTED BY THE DIRECTOR OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.THOMAS JOHN AMBOOKKAN FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 85 of 2003

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Dated this the 6th day of September, 2007

JUDGMENT

When a petition for early posting of the appeal came up for orders, this Court heard the appeal itself and and dispose of the same. Though notice on the 1st respondent was served by affixture, there is no appearance on behalf of the 1st respondent.

2. The appeal is filed by the complainant against the acquittal order passed in C.C.No.31/2002 on the file of the Chief Judicial Magistrate of Kollam. The 1st respondent was acquitted on the sole ground of the absence of the petitioner. It is not discernible from the impugned order that the attendance of the appellant is necessary. As per the principles laid down by this Court in decisions reported in Don Bosco V. Partech Computers Ltd. (2005(2) KLT 1003), G.F.S. Chits & Loans (P) Ltd. V. Rajesh (2006(3) KLT 825) and a decision of the Apex Court reported in Associated Cements Co. Ltd. V. Keshwanand (1998(1) KLT 179 (S.C.), the impugned order is not sustainable. In Don Bosco V. Partech Computers Ltd. (Supra), this Court held that when the presence of the complainant

was quite unnecessary and the Magistrate could proceed with the case by adjourning the same even if there was no representation from the counsel, the Magistrate should have adjourned the case, particularly when steps under section 82 and 83 of the Cr.P.C. were pending against the accused. In G.F.S.Chits & Loans (P) Ltd. V. Rajesh (Supra) this Court held that the courts should also bear-in-mind that unmerited, thoughtless disposal gives wrong signal to the society, staking even public confidence in the system of administration of justice. In paragraph 17 of 1998(1) KLT 179 (Supra) the Apex Court held as follows:-

> "17. Reading the section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore, be exercised

judicially and fairly without impairing the cause of administration of criminal justice."

3. Considering the above principles laid down by this Court as well as the Apex Court, this Court is of the view that the order under challenge is liable to be set aside and the matter has to be remitted to the trial court for fresh consideration. Ordered accordingly. The trial court is directed to proceed with the case from the stage at which the impugned order has been passed.

The appeal is allowed as above.

The appellant shall appear before the court below on 27-10-2005.

The trial court shall issue fresh notice to the 1st respondent.

The records of the case shall be forwarded to the trial court forthwith.

K. Thankappan,
Judge.

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K. Thankappan,J.

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Judgment
6-9-2007